



THE ATTORNEY GENERAL OF TEXAS

CRAWFORD C. MARTIN
ATTORNEY GENERAL

AUSTIN, TEXAS 78711

November 27, 1967

Hon. Robert S. Calvert
Comptroller of Public Accounts
State Capitol
Austin, Texas

Opinion No. M-161

Re: Whether there is pre-existing law for the payment of submitted claims for per diem, by a retired Justice of the Court of Civil Appeals, on an assignment for holding court in a District Court not covering the county of his residence.

Dear Mr. Calvert:

By recent letter to this office you have requested an opinion in regard to the above stated matter. We quote, in part, from your letter as follows:

"This department has received two claims for \$25.00 per day under the provisions of Senate Bill 349, Acts of the 57th Legislature, Codified as Article 200a, R.C.S., Section 2a, Subsection (4), for a retired Justice of a Court of Civil Appeals, on an assignment by the Chief Justice of the Supreme Court under Senate Bill 397, Acts of the 60th Legislature /to a District Court other than one including the county of his residence./

"This question has arisen in this department; Is there a pre-existing law for the payment of these claims as the Judge is not a retired District Judge?"

Article 200a, Vernon's Civil Statutes, also known as the Administrative Judicial Act, among other things, authorizes per diem expenditures for judges who are assigned to

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sit in other districts or counties. Subsection (4) of Section 2a of Article 200a, is quoted, in part, as follows:

" . . . judges who are required to hold court outside their own districts and out of their own counties under the provisions of this Act, shall receive a per diem of Twenty-five (\$25.00) Dollars for each day, or fraction thereof, which they spend outside their said districts and counties in the performance of their duties;"

Article 200a, standing alone applies only to District Judges, and the Judge is a recent retired Court of Civil Appeals Judge, [see Attorney General's Opinion No. M-151 (1967)], having retired on September 1, 1967, under the provisions of Article 6228b, Vernon's Civil Statutes, as amended by Senate Bill 397, Acts 60th Legislature, Regular Session, 1967, chapter 346, page 820. The amendment was effective June 8, 1967.

Section 7 of Senate Bill 397 is quoted, in part, as follows:

" . . . Any person who has retired under the provisions of this Judicial Retirement Act /Art. 6228b, V.C.S./ may elect in writing addressed to the Chief Justice of the Supreme Court within ninety (90) days after such retirement, or within ninety (90) days after the effective date of this amended Section, whichever is the later date, to continue as a judicial officer, in which instance they shall, with their own consent to each assignment, be subject to assignment by the Chief Justice of the Supreme Court to sit in any court of this state of the same dignity, or lesser, as that from which they retired, and if in a District Court, under the same rules as provided by the present Administrative Judicial Act, /Art. 200a, V.C.S./ and while so assigned, shall have all the powers of judges thereof. . . ."
(Emphasis added.)

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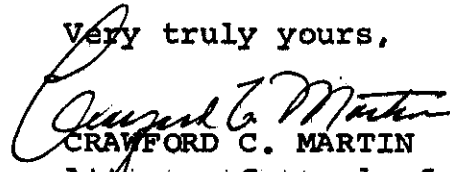
The underlined portion of Section 7 clearly authorizes retired judges of the appellate courts, such as the judge in question, to sit as a district judge under the provisions of Article 200a, V.C.S.

Construing Articles 200a and 6228b, as amended, together, we are of the opinion that there is pre-existing statutory authority to pay the per diem claims as set out in your opinion request.

S U M M A R Y

Article 6228b, V.C.S., as amended, which authorizes retired appellate judges to serve as district judges, under the authority of Article 200a, V.C.S., authorizes payment of the per diem claims of a retired appellate judge under the facts as submitted.

Very truly yours,


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APPROVED:
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